No. 88-1848

Supreme Court, U.S.
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SEP 1 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

GENERAL MOTORS CORPORATION,
Petitioner,

v.

ARLIE GLEN SKELTON, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

RESPONDENTS' SUPPLEMENTAL BRIEF IN OPPOSITION

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RESPONDENTS' SUPPLEMENTAL BRIEF IN OPPOSITION

In our brief in opposition to GM's petition for a writ of certiorari, respondents first contended that there is no longer an Article III case or controversy because GM no longer has any economic stake in the fee issue it seeks to raise in this Court. Br. in Opp. at 4. GM disputed this fact in its reply brief. Reply Br. at 2-5. Now, on the basis of current information provided by the settlement fund administrator, it is unmistakably clear that under no set of circumstances can GM lay claim to any additional money if the fee enhancement award should be reversed and the money repaid to the settlement fund.

We attach the affidavit of Richard Hoyt, the president of Analytics, Inc., dated August 15, 1989. Analytics, Inc. is the independent, court-appointed settlement fund administrator. The affidavit of Mr. Hoyt confirms beyond doubt that the valid claims already filed by class members would fully exhaust the settlement fund even if the multiplier fees paid to class counsel were to be ordered repaid to the fund.

I. Mr. Hoyt's Affidavit Confirms GM's Lack Of Standing

GM asserts that it has standing "to seek review of respondents' legal entitlement to an enhanced fee" based on a possible reversionary interest provided for in the reverter clause of the Settlement Agreement (¶ 25). Reply Br. at 2. GM implies that if the risk multiple awarded by the district court is set aside, it will receive excess funds under the reversionary clause of the Settlement Agreement.

GM is wrong. As the affidavit of Mr. Hoyt demonstrates (App. at 2a), the claims already made by class members will more than consume any additional recovery if the Seventh

Circuit's decision allowing a risk multiple is overturned and no multiple is allowed. A reversal of the Seventh Circuit's decision will have *no impact whatsoever on GM.*

Additionally, contrary to its assertion, GM no longer has standing to seek certiorari arising from "the same interest that it had in the district court." Reply Br. at 3. GM at one time had a *potential* stake in the fees awarded to respondents, including the lodestar award, because any fee award would decrease GM's *potential* reversionary interest in leftover funds. But that potential interest has been extinguished because, as the Hoyt affidavit undisputably demonstrates, the valid claims already filed by class members will completely exhaust the settlement fund.

GM raises a new claim to a reversionary interest in money that might remain in the settlement fund because of "undeliverable ... lost and uncashed checks." Reply Br. at 2. However, any interest GM may have in money that might remain in the fund is totally independent of, and irrelevant to, the fees awarded to class counsel.[1] To date, there have been two distributions to the class. The funds leftover from uncashed checks after the first distribution were redistributed to the class in the second distribution. If the multiplier fee award were overturned, there would be a third distribution which would include the small amount of uncashed checks remaining after the second distribution. Thus, a decision by this Court with respect to attorneys' fees will not affect any potential interest GM may have in uncashed checks.

In fact, the amount of uncashed checks would actually decrease if there were a third distribution. If the multiple award is reversed, the fund administrator will only distribute funds to those class members who cashed their checks after

[1]The only reason that GM has any interest in funds from uncashed checks is because the costs of mailing to the class would outweigh the small amount of funds which might remain. As we explain herein, if the multiple award is reversed and the fees repaid by class counsel, any amount remaining will be *de minimis.*

the last disbursement which was just completed in June of this year. As a result, the existence of a current, fully updated class list would for all practical purposes eliminate any chance of undeliverable, lost and uncashed checks because those class members who received and cashed their checks in the most recent June distribution would do so again.

A reversal of the Seventh Circuit's decision will not make *any* additional funds available for reversion to GM. Therefore, GM has no standing to seek certiorari with respect to the award of a risk multiple.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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September 1, 1989

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

IN RE GENERAL MOTORS CORPORATION "THM 200" TRANSMISSION LITIGATION

ARLIE GLEN SKELTON, *et al.*, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

No. 79 C 1243
Class Action
Honorable John Nordberg

JOSEPHINE C. NEWTON, *et al.*, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendants.

No. 80 C 2151
and consolidated cases

AFFIDAVIT OF RICHARD C. HOYT
President and Chief Executive Officer of Analytics, Inc.

1. I am the President and Chief Executive Officer of Analytics, Inc., which was appointed by the court to serve as Settlement Administrator for the processing of claims and the disbursements of the fund created in connection with the

settlement of *Arlie Glen Skelton, et al. v. General Motors Corporation*, 79 C 1243, and related cases.

2. In connection with the settlement, 145,585 claims were filed, of which 69,538 were found to be valid. The 69,538 valid claims include 4,552 claims from individuals who had previously received compensation from General Motors and who received a fixed payment of $65.93.

3. The average amount of classmembers' Eligible Qualified Repair Expense was $340.97.

4. Under the terms of Paragraph 26 of the Settlement Agreement, General Motors was required to contribute up to an additional $2,500,000 if, after payment of legal fees and settlement administration and other expenses, claimants received less than either (i) 75% of their Eligible Qualified Repair Expenses or (ii) 50% of their Qualified Repair Expenses. This $2,500,000 has been paid by General Motors and has been distributed to classmembers.

5. Because of the number of valid claims received, classmembers would have to be paid, from returned legal fees or other sources, an additonal $2,986,439 before General Motors would be entitled to any refund of the amounts it was required to contribute to the fund.

DATED: August 15, 1989

/s/ RICHARD C. HOYT
RICHARD C. HOYT

SUBSCRIBED and SWORN
to before me this 15th day of
August, 1989.

/s/ TAMARA L. TRIGGS
Notary Public